

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

HEALTH CARE FACILITIES)	Case No. 5:21-cv-01070-BMB
PARTNERS, LLC, <i>et al.</i> ,)	
)	JUDGE BRIDGET M. BRENNAN
Plaintiffs,)	
)	MAGISTRATE JUDGE AMANDA M.
v.)	KNAPP
)	
JACK DIAMOND, <i>et al.</i> ,)	<u>JOINT STATUS REPORT</u>
)	<u>TO THE COURT</u>
Defendants.)	

In accordance with Section II of the Court’s First Amended Case Management Plan and Trial Order, Dkt. 95, respective counsel for Plaintiffs (“Plaintiffs”), Defendant Jack Diamond (“Diamond”), and Defendant Brennan, Manna & Diamond, LLC (“BMD”) hereby submit this Joint Status Report to the Court.

A. Discovery Update

1. Plaintiffs’ Written Discovery

On September 10, 2021, Plaintiffs served their first set of written discovery requests on Diamond. Diamond timely served responses to Plaintiffs’ admission requests and interrogatories on October 12, 2021, and Diamond served written responses to Plaintiffs’ document requests on November 22, 2021.

On November 11, 2021, Plaintiffs served their second set of written discovery requests on Diamond. Diamond timely served responses to Plaintiffs’ admission requests and interrogatories on December 9, 2021, and Diamond has since served amended responses to several of Plaintiffs’ admission requests. Diamond served written responses to Plaintiffs’ second document requests on January 28, 2022.

On January 7, 2022, Plaintiffs served their third set of document requests on Diamond, and Diamond served written responses to Plaintiffs' document requests on March 11, 2022.

Diamond has made several document productions to date and has produced over 3,500 documents. Diamond has produced a privilege log for those productions. Diamond's production is substantially complete.

On September 20, 2021, Plaintiffs served their first written discovery requests on former Defendants John Childs ("Childs") and Heidi Heinle ("Heinle"), and Plaintiffs timely received responses and document productions from them.¹ Childs' and Heinle's document productions are completed.

On October 6, 2021, Plaintiffs served a document subpoena on then non-party BMD. By letter, counsel for BMD objected to that subpoena. On November 12, 2021, with leave of Court, Plaintiffs filed their First Amended Complaint naming BMD as a new party defendant. On December 17, 2021, BMD appeared in the case and filed its Answer to Plaintiffs' First Amended Complaint.

On January 7, 2022, Plaintiffs served their first set of written discovery requests on BMD. BMD timely served responses to Plaintiffs' admission requests on February 4, 2022, and on March 16, 2022, BMD served its unverified interrogatory responses. To date, Plaintiffs have not received BMD's written responses to Plaintiffs' first document requests, which were due to be served on February 7, 2022. However, BMD has made several document productions in response to Plaintiffs' document requests. All discoverable documents generated by the search terms and custodians identified by Plaintiffs have been produced by BMD.

¹ In May 2022, Childs and Heinle settled with Plaintiffs; they no longer are parties to this case.

2. Defendants' Written Discovery

On September 24, 2021, Diamond served his first set of written discovery requests on Plaintiffs. Plaintiffs timely served their responses and made their initial document production. On December 15, 2021, Diamond served his second set of admission requests on Plaintiffs, and on December 17, 2021, Diamond served his second set of document requests on Plaintiffs. Plaintiffs timely served their responses to Diamond's admission requests and document requests and made additional document productions. On January 26, 2022, Diamond served his third set of document requests on Plaintiffs, and Plaintiffs timely served their responses on February 25, 2022. On March 1, 2022, Plaintiffs served amended responses to Diamond's second set of admission requests. Plaintiffs have made eleven document productions to date, totaling 6,051 documents. Plaintiffs have substantially completed their document production.

3. Third Party Document Discovery

On September 23, 2021, Plaintiffs served a document subpoena on former Defendant Value Health.² Counsel for Value Health timely objected to that subpoena. For several months, counsel for Plaintiffs and counsel for Value Health engaged in comprehensive discussions concerning the scope of Plaintiffs' subpoena, and on February 16, 2022, Value Health completed its production of documents. Value Health has not yet served its privilege log.

On December 6, 2021, Plaintiffs served a document subpoena on non-party Matthew Heinle. Plaintiffs timely received Mr. Heinle's document production and privilege log. Additionally, on January 14, 2022, Plaintiffs served a document subpoena on non-party Matthew Diamond. Plaintiffs received Matthew Diamond's document production on February 23, 2022, and have since received Mr. Diamond's privilege log.

² Value Health settled with Plaintiffs shortly after the lawsuit was filed and is no longer a party to this case.

On January 13, 2022, Diamond served a document subpoena on Hylant-Cleveland and on January 19, 2022, Diamond served a document subpoena on USI Insurance Services, LLC (“USI”). On February 23, 2022, Diamond served a document subpoena on Medical Facilities Corporation (“MFC”). In April 2022, MFC produced 611 responsive documents. USI and Hylant-Cleveland have also produced documents responsive to these subpoenas.

4. Depositions

In April 2022, the parties deposed eight fact witnesses, including corporate representatives of Plaintiffs and BMD. By stipulation, the parties deposed two additional fact witnesses in May 2022.

Prior to Plaintiffs’ deposition of a BMD corporate representative on April 29, 2022, counsel for Plaintiffs and BMD agreed to reserve questions on certain deposition topics listed in Plaintiffs’ deposition notice for a continued deposition to be scheduled at a later date. Plaintiffs’ counsel is assessing the need for this deposition. As of the date of this filing, this deposition has not been scheduled.

B. Settlement Discussions

Shortly after the lawsuit was filed, Value Health settled with Plaintiffs. In May 2022, Childs and Heinle likewise settled with Plaintiffs.

As reported at the Case Management Conference, counsel for Plaintiffs and counsel for Diamond engaged in early settlement discussions, which were not successful. On March 17, 2022, counsel for Plaintiffs sent to counsel for Diamond and counsel for BMD a settlement demand letter, which contained a settlement offer that expired by its own terms on March 25, 2022.

In compliance with the Court's May 26, 2022 Order referring the parties to mediation, Dkt. 126, Plaintiffs and Defendants Diamond and BMD, along with Defendants' insurance carrier, Ohio Bar Liability Insurance Company ("OBLIC"), participated in a private mediation session before David A. Schaefer, Esq. on June 6, 2022. A settlement was not reached. A mediation report was timely filed. *See* Dkt. 131.

C. Pending or Filed Motions

On November 22, 2021, Diamond filed his Motion to Dismiss Plaintiffs' Amended Complaint for Lack of Subject Matter Jurisdiction, Dkt. 72, (the "Motion to Dismiss"), pursuant to Federal Rule of Civil Procedure 12(b)(1). The Motion to Dismiss has been fully briefed by the parties. A ruling has not been issued by the Court.

On February 21, 2022, Diamond filed a Motion for Partial Summary Judgment, Dkt. 96. The Motion for Partial Summary Judgment has been fully briefed by the parties. A ruling has not been issued by the Court.

On March 31, 2022, non-party OBLIC filed a Motion to Intervene, Dkt. 104, seeking to intervene in this action and to assert a claim for declaratory judgment against all parties. The Motion to Intervene has been fully briefed. A ruling has not been issued by the Court.

No other motions are currently pending.

D. Case Management Plan Developments

At this time, the parties are operating under the dates and deadlines set forth in the Court's Order, Dkt. 135, granting the parties' Joint Motion to Modify the First Amended Case Management Plan and Trial Order.

E. Other Related Developments

On June 30, 2022, Defendant Jack Diamond filed a separate state court lawsuit against a newly formed holding company called HCFP Legacy Holdings, LLC ("Legacy") and three of the

Managers of Legacy. That new state court action is styled and numbered *Jack Diamond v. G. Edward Alexander, Jr., et al*, Case No. CV-2022-07-2215, in the Court of Common Pleas, Summit County, Ohio.

Respectfully submitted,

/s/ Steven J. Miller

STEVEN J. MILLER (0014293)
SteveMiller@BuckleyKing.com
DAVID A. KUNSELMAN (0073980)
Kunselman@BuckleyKing.com
BUCKLEY KING LPA
1400 Fifth Third Center
600 Superior Avenue East
Cleveland, OH 44114-2652
Telephone: (216) 363-1400
Facsimile: (216) 579-1020

BARTON W. COX
Texas State Bar No. 24065087
(admitted *pro hac vice*)
beau.cox@nortonrosefulbright.com
VERONICA PORTILLO KENDRICK
(admitted *pro hac vice*)
Texas State Bar No. 24055609
veronica.kendrick@nortonrosefulbright.com
JACQUELINE G. BAKER
(admitted *pro hac vice*)
Texas State Bar No. 24109609
jackie.baker@nortonrosefulbright.com
NORTON ROSE FULBRIGHT US LLP
2200 Ross Avenue, Suite 3600
Dallas, Texas 75201
Telephone: (214) 855-8000
Facsimile: (214) 855-8200

Attorneys for Plaintiffs

/s/ Orville L. Reed, III

Orville L. Reed, III (0023522)
David W. Hilkert (0023486)
Hamilton DeSaussure, Jr. (0023516)
STARK & KNOLL, LPA
3475 Ridgewood Road
Akron, OH 44333-3163
Telephone: (330) 376-3300
Facsimile: (330) 376-6237
oreed@stark-knoll.com
dhilkert@stark-knoll.com
hdesaussure@stark-knoll.com
Counsel for Defendant Jack Diamond

/s/ Frank G. Mazgaj

Frank G. Mazgaj (0037910)
Emily R. Yoder (0084013)
HANNA CAMPBELL & POWELL LLP
3737 Embassy Parkway, Suite 100
Akron, Ohio 44333
Telephone: (330) 670-7330
Facsimile: (330) 670-7450
Counsel for Defendant Brennan, Manna & Diamond, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this August 11, 2022, a copy of the foregoing was filed electronically. Parties may access this filing through the Court's electronic filing system.

/s/ Steven J. Miller

STEVEN J. MILLER (0014293)